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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-790

STATE OF ALABAMA AND
W. S. FURLOW, WARDEN,
PETITIONERS

—VS—

WILLIAM G. BRINKS,
RESPONDENT

ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' PETITION FOR REHEARING

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COUNSEL FOR PETITIONERS

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PETITIONERS' PETITION FOR REHEARING

The petitioners present their petition for a rehearing of the above entitled cause, and, in support thereof, respectfully show:

I. The decision and opinion of the Honorable Court below cannot be better stated than it is in the headnote to this case in the Federal Reporter, which reads in pertinent part as follows:

"... the [*Alabama*] *Court* exceeded the allowable range of its discretion in refusing to order a sanity im-

vestigation under *Alabama Law.*" *Brinks v. Alabama*, 465 F. 2d 446 (Emphasis supplied)

2. In their original petition the petitioners pointed out that the decision of the Honorable Court below conflicts with those of other United States Courts of Appeal, with the very Alabama law upon which it is based and with the decisions of this Honorable Court.

3. Now, the petitioners point out that if the decision of the Honorable Court below is allowed to stand it will prevent reliance by State officials on the interpretations of State law by State courts. It will compel State officials to await a contest in the Federal courts for a determination of the meaning of each State statute.

4. If the decision of the Honorable Court below is allowed to stand it will require the interpretation by the Federal Courts and ultimately this Honorable Court of every state statute new and old from each of the fifty states.

5. The petitioners point out that the respondent never requested a *jury* determination of his sanity to stand trial from the Courts of the State of Alabama and that there is no indication in the record that he ever wanted, or, indeed, wants now, a *jury* determination of his sanity to stand trial. Yet, the Honorable Court below granted the petitioner a new trial on the grounds that he was not given a *jury* determination of his sanity to stand trial, something which he apparently does not particularly want and certainly does not need. And, see *Picard v. Connor*, ____ U.S. ____, 30 L. Ed.2d 438, 92 S. Ct. ____ (1971).

6. The petitioners again apologize for the length of the original petition, but this resulted from the need presented to this Honorable Court all of the matters relevant to the issues.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the writ of certiorari be issued.

Respectfully submitted,

WILLIAM J. BAXLEY
Attorney General of Alabama

JOSEPH G. L. MARSTON, III
Assistant Attorney General
of Alabama

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF COUNSEL

I, Joseph G. L. Marston, III, counsel for the above-named petitioners, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and that the petition is restricted to the grounds above specified.

JOSEPH G. L. MARSTON, III
Assistant Attorney General
of Alabama

CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, one of the attorneys for the petitioners and a member of the Bar of the Supreme Court of the United States, hereby certify that on this [illegible] day of January, 1973, I did serve the requisite number of copies of the foregoing Petitioners' Petition for Rehearing on the attorney for the respondent by mailing said copies to him, postage prepaid, and addressed as follows:

Honorable Frank B. McRight
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